

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

VISIONQUEST NATIONAL, LTD.	:	
	:	
v.	:	
	:	Case No. 04-RC-089101
NATIONAL UNION OF HOSPITAL AND	:	
HEALTH CARE EMPLOYEES, DISTRICT	:	
1199C		

**ANSWER OF RESPONDENT VISIONQUEST TO PETITIONER DISTRICT 1199C'S
REQUEST FOR REVIEW**

I. INTRODUCTION

Respondent VisionQuest (hereinafter "Employer") submits this Answer to Petitioner District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO's (hereinafter the "Petitioner" or "Union") request for review of the Hearing Officer's decision of January 3, 2013. The Petitioner's request for review is limited to the Hearing Officer's determination that the Stipulated Election Agreement was unambiguous. The Hearing Officer correctly determined that the Stipulated Election Agreement was unambiguous and the Petitioner's request for review should be denied.

As the Hearing Officer noted, the National Labor Relations Board ("Board") has held that where a stipulation lists specific job titles which are included in the unit, the disputed classifications are not listed therein, and there is an exclusion for all other employees, the stipulation will be read to clearly exclude the disputed classification. *Bell Convalescent Home*, 337 NLRB 191 (2001). Here, it is undisputed that the Stipulated Election Agreement listed by job title every position that was included in the unit, expressly excluded all other employees, and

the two disputed job titles, Family Intervention Specialist and Safety Monitor, were not expressly listed as included in the unit. The Union's argument that it intended to include the disputed positions in the unit is belied by the clear, plain, and precise language of the Stipulated Election Agreement. Simply put, the Union freely agreed to the unit's definition and must now be held to it.

II. STATEMENT OF FACTS

A. Background

VisionQuest is a national company that provides programming, support, housing, and educational services to at-risk youths. One of VisionQuest's offices is located at 301 East Cheltenham Avenue, Philadelphia, PA. This office focuses on providing services to youths located in and around the Philadelphia area. Four different programs are operated from the 301 Cheltenham location. (Tr. Vol. 2 at 228-229). The In-Home Detention Program monitors youths when they are at home. *Id.* The Lighthouse Program teaches youths independent living skills to assist in their transition from placement, such as In-Home Detention, to living on their own. *Id.* The Family Functional Therapy Program works directly with youths and their parents to try and resolve familial problems. *Id.* The Reintegration Program works to reintegrate youths back into living and working in the city. *Id.* The program assists its participants in finding educational opportunities, employment and any other services that may be helpful to their transition back into city life. *Id.*

The position of Family Intervention Specialist is a supervisory position within the Reintegration Program. (Tr. Vol. 2 at 233). A Family Intervention Specialist's job duties include developing and completing an individual treatment plan for each child under their care, ensuring that the services in the plan are provided, communicating with agencies, family, and

other individuals significant to the child and providing direct intervention when a crisis situation arises. Family Intervention Specialists are also responsible for supervising the Community Backers. (Tr. Vol. 2 at 233). Each Family Intervention Specialist generally works with two Community Backers. (Tr. Vol. 2 at 176). They assign the Community Backers work, evaluate their performance and have the authority to issue discipline, up to and including termination. *See* Respondent Exhibits 14, 15, 16, 18, and 19. Lucinda Harmon, Juila Strickland, Joslyn Brooks and Renee Toney were all employed as Family Intervention Specialists.

The position of Family Intervention Specialist is substantially different than the non-supervisory position of Community Backer. The position of Community Backer involves monitoring and documenting youths' activities on a day to day basis and does not require any degree beyond a high school diploma or equivalency. *See* Respondent Exhibit 12.

Comparatively, a Family Intervention Specialist is responsible for developing and fostering a therapeutic relationship between youth and other staff members and to ensure that the youth receives all the services specified in his or her plan. *See* Respondent Exhibit 11. Additionally, a Family Intervention Specialist must have a four-year undergraduate degree or four years of related experience.

The position of Safety Monitor is a position within the Lighthouse Independent Living Program. (Tr. Vol. 1 at 119-20). Mr. Jones holds the position of Safety Monitor. His job duties include visiting the living arrangements of children in the program to ensure compliance with general program rules and safety requirements. (Tr. Vol. 1 at 121). These visits are random and unannounced. *Id.* Mr. Jones is required to be on call from 8 am to 8 pm. (Tr. Vol. 1 at 119-20). He works out of the 301 Cheltenham location roughly three times a week. *Id.*

B. The Election

On September 11, 2012, District 1199C filed a Petition of Certification of Representation (“Petition”) with the National Labor Relations Board (NLRB) for the purpose of organizing employees at VisionQuest’s 301 East Cheltenham Avenue location. *See* Respondent Exhibit 2. The petitioned-for unit included “All full time and regular part time case managers, community backers, clerical support staff, administrative assistants and therapists employed by the Employer at its 301 East Cheltenham Avenue Philadelphia, PA facility.” *Id.* The petitioned-for unit excluded “All other employees, managerial employees, guards and supervisors defined by the Act.” *Id.*

The petitioned-for unit did not include the job title of Family Intervention Specialist or Safety Monitor. Ms. Bendig, the Union’s representative, testified that she was aware of the position of Family Intervention Specialist and that employees at the 301 Cheltenham facility were employed in that position. (Tr. Vol. 1 at 35-36, 44, 46, 94). She testified that she learned about the position from authorization cards the employees filled out indicating their interest in joining a Union and that she used those authorization cards to draft the description of the petitioned-for unit. (Tr. Vol. 1 at 44, 46, 80-81, 94). Despite her clear knowledge of the position title, Ms. Bendig did not include the job title of Family Intervention Specialist in the Petition. *Id.*

After the Petition was filed, the parties began negotiating a Stipulated Election Agreement. At no point did the Petitioner convey to VisionQuest that they were seeking a “wall to wall” unit. (Tr. Vol 2 at 232). Instead, the negotiations centered on what additional positions would be included in the potential unit. *Id.* On September 21, 2012, counsel for VisionQuest, James J. Sullivan, Jr., informed District 1199C and its counsel, that “[t]he additional classifications to be added to those on the petition are: Reintegration Workers; Transition Specialists; Admissions Coordinators; Housing Coordinators and In-Home Detention Program

Directors (one employee, Derrick Jones).” See Respondent Exhibit 5, 6. Through its counsel District 1199C assented to the addition of the aforementioned positions and agreed that no other positions were included in the unit. *Id.*

On September 24, 2012, the Company and the Union entered into a binding Stipulated Election Agreement (“Agreement”). The Agreement provided for a secret ballot election on October 15, 2012 at the Company’s 301 East Cheltenham Avenue office. The Agreement also defined the unit and eligible voters as follows:

“5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time case managers, community backers, clerical support staff employees, administrative assistants, therapists, reintegration workers, transition specialists, admissions coordinators, housing coordinators, and in-home detention program directors working at or reporting to the Employer’s [Company] offices located at 301 Cheltenham Avenue, Philadelphia, PA.

Excluded: All other employees, managerial employees, guards and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending September 15, 2012”

On October 1, 2012, an *Excelsior* list was provided by the Company to the Board Agent. The list did not include the names of the four Family Intervention Specialists: Lucinda Harmon, Julia Strickland, Joslyn Brooks and Renee Toney. The list also did not include the name of the Safety Coordinator Troy Jones. The Union belatedly objected to the exclusion of the names of Lucinda Harmon, Juila Strickland, Joslyn Brooks and Renee Toney from the *Excelsior* list in a letter to the Board Agent on October 12, 2012, *three days* before the election. See Petitioner Exhibit 3. Neither the Board Agent nor the Petitioner, however, informed the Respondent about these

objections until just prior to the opening of the balloting at the election on October 15, 2012.

The Petitioner **never** objected to the exclusion of Troy Jones name from the *Excelsior* list.

On October 15, 2012, the election was conducted and it resulted in a tied vote. Eight ballots were challenged. The Board Agent challenged the ballots of Lucinda Harmon, Julia Strickland, Joslyn Brooks, Renee Toney, and Troy Jones (collectively “disputed employees”) because their names were not on the *Excelsior* list. The Union challenged the ballots of Ernest Conners, Catherine Dertouzos, and Randy Sheagley on the grounds of lack of community of interest. Subsequently, VisionQuest dropped its objection to the Union’s challenge of Randy Sheagley’s ballot. Accordingly, the only ballots at issue were those of Lucinda Harmon, Julia Strickland, Joslyn Brooks, Renee Toney, Troy Jones, Ernest Conners and Catherine Dertouzos.

On November 14th and 16th, a hearing was held before Hearing Officer Jennifer Roddy Spector. At that hearing, evidence was presented regarding the parties’ intent when entering into the Agreement and whether the Agreement was ambiguous. Over the Employer’s objection, evidence was also presented regarding a community of interest analysis for the positions of Family Intervention Specialist and Safety Monitor.¹ On January 3, 2013, the Hearing Officer

¹ The Employer renews its objection to the inclusion of any community of interest evidence at the Hearing and reserves the right to challenge the Hearing Officer’s alternative conclusions regarding community of interest if the stipulation is found to be ambiguous. As argued in the employer’s post hearing brief, the Petitioner clearly and unmistakably waived its right to any hearing in section 1 of the Stipulated Election Agreement. Section 1 states in relevant part:

The parties AGREE AS FOLLOWS:

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board’s Rules and Regulations.

It is well-settled that a union may waive statutory rights, provided that the waiver is “clear and unmistakable.” *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). One manner in which a party may meet the “clear and unmistakable” standard is to point to specific language in a contract establishing the waiver. *See Trojan Yacht*, 319 NLRB 741 (1995). Here, there can be no question

issued a decision finding that the Agreement was not ambiguous, that the challenges to the ballots were sustained and recommended that a Certification of Results of Election issue.

III. LEGAL ARGUMENT

A. The Hearing Officer Correctly Determined That the Stipulated Election Agreement was not Ambiguous.

The Board has adopted the principle that when parties stipulate to the unit in which an election is held, they are bound by that agreement. *Premier Living Center*, 331 NLRB 123 (2000). In reviewing a stipulated unit, the Board's function is to ascertain the intent of the parties with regard to the disputed voter. *Bell Convalescent Hospital*, 337 NLRB 191 (2001). Where the objective intent of the parties concerning the questioned portion of the unit description is expressed in clear and unambiguous terms, the Board will hold the parties to their agreement. *Id.* The Board will find a clear intent to include those classifications that match the express language and exclude those classifications that do not match the stipulated bargaining unit description. *Id.* Moreover, if a classification is not expressly included and there is an exclusion for "all other employees," the stipulation will be read to clearly exclude any non-listed classification. *Reliable Trucking, Inc.*, 349 NLRB 812, 815 (2007).

The Hearing Officer correctly concluded that the language of the parties' Agreement was clear and unambiguous. The Agreement expressly identified by **job title** the positions that would be included in the unit. The positions of Family Intervention Specialist and Safety Monitor were not included within the plain language of the unit description. The only position not expressly identified by title was that of Receptionist, which, at the Union's request, was

that Petitioner clearly and unmistakably waived the right to a hearing, and did so in no uncertain terms.

described as Clerical Support Staff in the unit description. Accordingly, employees in the position of Family Intervention Specialist and Safety Monitor, as well as other positions, were properly left off of the *Excelsior* list because they were not meant to participate in the election.

Moreover, the Agreement also contains express language of exclusion that excludes “all other employees” from the unit. Taken in tandem with the identification by job title of the positions included in the unit, there can be no doubt that the parties’ intended to exclude every position not expressly listed. The Union’s statement that “the parties neither expressly included nor excluded the job classifications of Family Intervention Specialist or Safety Monitor” is grossly inaccurate. As the Hearing Officer correctly found, the Agreement clearly excluded all positions not expressly included. Where, as here, the parties’ intent is clear and expressed in unambiguous terms, the Board must hold the parties to their agreement. *Bell Convalescent Hospital*, 337 NLRB 191 (2001).

Further, the Union’s reliance on *Los Angeles Water and Power Employees’ Assn.*, 340 NLRB 1232 (2003) is inappropriate. As the Hearing Officer explained, in that case, the Board found that the parties’ intent was unclear despite the exclusion of “all other employees” because the stipulated inclusions were phrased to include “all full time and regular part time ... employees, including” This construction was found unclear because the word “including” could mean including but not limited to the listed job titles. Here, that construction was not used and the Agreement specifically listed every job title included in the unit.

Additionally, Ms. Bendig, the Union’s representative, expressly testified that she was aware of the title of Family Intervention Specialist both while she was drafting the description of the petitioned-for unit and before the Agreement was entered into. (Tr. Vol. 1 at 35-36, 44, 46) She further testified that she choose to draft the unit by job title instead of simply petitioning for

a wall to wall unit and that she used the job positions listed on the website and those identified on the authorization cards to draft the petition. (Tr. Vol. 1 at 44, 46, 80-81, 94). She admitted that she failed to include the position of Family Intervention Specialist despite her knowledge of that job title and its specific use on the cards. *Id.* Although the ruling in *Bell Convalescent* would apply even if the Union did not have full knowledge of all the job titles, Ms. Bendig's testimony demonstrates that she knew about the job title of Family Intervention Specialist and failed to include it in the Agreement. Her testimony also undermines the Union's *post-hoc* position at the hearing that they were attempting to petition for a wall-to-wall unit and assumed that the title Case Manager covered the position of Family Intervention Specialist.

In sum, the Hearing Officer correctly applied the Board's prior decision in *Bell Convalescent* and the Union's position to the contrary is without merit. The Union's effort to convert this matter into a case about management manipulation and "glossy job titles," is unconscionable. The case is about nothing more than the Union's desire to upend an agreement that they entered into knowingly and freely. After having an opportunity to include the position of Family Intervention Specialist and Safety Monitor in the Stipulated Election Agreement and another opportunity to address the issue when the *Excelsior* list was given to the Union on September 29, 2012, the Union should not be permitted now, after the election, to get a third "bite at the apple" and change the scope of the stipulated unit after the election has been held.

IV. CONCLUSION

Based on the foregoing, the Petitioner's request for review should be denied, the decision of the Hearing Officer confirmed and a Certification of Election Results should issue.

Respectfully submitted,

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